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# UNITED NATIONS CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES

Note by the Secretariat*

## Introduction

1. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the culmination of over fifteen years of work by the United Nations Commission on International Trade Law (UNCITRAL). It was adopted by the General Assembly of the United Nations under recommendation of the Sixth (Legal) Committee on 9 December 1988.

2. The Convention presents, for optional use in international transactions, a modern, comprehensive set of rules for international bills of exchange and international promissory notes that satisfy its requisites of form. The text of the Convention reflects a deliberate policy to minimize departures from the content of the two existing principal legal systems, preserving, where possible, the rules on which those systems concur. Where conflicts exist, requiring selection of one system's rule or a compromise solution, the Convention introduces a number of novel provisions. Another group of new rules are the result of special efforts to have the Convention respond to modern commercial needs and banking and financial market practices.

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* This note has been prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Convention. Commentaries prepared by the secretariat on earlier drafts of the Convention appear in A/CN.9/213 (reproduced in UNCITRAL Yearbook, vol. XIII-1982) and A/CN.9/67 (reproduced in UNCITRAL Yearbook, vol. III-1972).

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3. The Convention is divided into nine chapters. Chapter one deals with the sphere of application of the Convention and the form of the instrument covered by it. Chapter two contains definitions and other general provisions, including rules on the interpretation of various formal requirements. Chapter three addresses questions relating to the transfer of an instrument. The fourth chapter covers the rights and liabilities of parties to, and holders of, an instrument. The fifth chapter addresses issues relating to presentment of an instrument, dishonour by non-acceptance or non-payment, and the conditions precedent to parties' rights of recourse. The sixth chapter deals with the discharge of liability on an instrument. Chapters seven and eight deal with lost instruments and limitation of actions (prescription). Lastly, the final provisions are found in chapter nine.

## I. BACKGROUND TO THE CONVENTION

4. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the result of a movement to establish a modern, self-contained international legal regime that would apply world-wide.

5. At its very first session held in 1968, UNCITRAL decided that, along with international sale of goods and international commercial arbitration, international payments should be given priority in its programme of future work. It was thought to be necessary to support the continued use of bills of exchange and promissory notes for international payments despite the emergence of new payment mechanisms. The new practices and techniques, it was thought, would not displace the more conventional usages, especially in the important role of financing international transactions.

6. From the outset the work undertaken by UNCITRAL in this area consisted of finding ways to overcome the great many disparities between the various negotiable instruments laws of the world. Previous attempts at unifying the law of negotiable instruments had brought results only in a limited region or among countries of the same legal tradition. For instance, the efforts undertaken at the Hague in 1910 and 1912 and under the League of Nations in 1930 and 1931 culminating in the adoption of the Geneva Uniform Laws for Bills of Exchange, Promissory Notes and Cheques had resulted in the harmonization of the negotiable instruments laws of only part of the civil law world and, on the common law side, a similar harmonization had flowed from the issuance of the Bills of Exchange Act 1882 of the United Kingdom, on which the United States Negotiable Instruments Law (superseded by article 3 of the Uniform Commercial Code) and the various Bills of Exchange Acts of the Commonwealth countries had been modelled. But notwithstanding these influences, considerable variation exists in the case law and commercial practice even among countries of the same legal tradition.

7. The first step taken by UNCITRAL was to consult with the International Institute for the Unification of Private Law (UNIDROIT) which had previously addressed the subject of unification of the law relating to negotiable instruments. At the request of the Commission, UNIDROIT prepared a preliminary report on the possibilities of extending the unification of the law of bills of exchange and cheques. In the light of this report the Commission considered three possible methods of promoting unification. These were, firstly: encouraging a wider acceptance of the Geneva Conventions of 1930 and 1931; secondly, revising the Geneva Conventions of 1930 and 1931 with a view to making them more acceptable to countries following the Anglo-American system; and, lastly, creating a new negotiable instruments law. The discussions showed that the method most likely to succeed would be the creation of a new negotiable instruments law. It was felt that merely revising the Geneva Conventions would not make them acceptable to common law States.

8. Before resolving to begin the preparation of a new negotiable instruments law the Commission decided to conduct an extensive enquiry to obtain the views and suggestions of Governments, banks and trading institutions. The Commission prepared and distributed an elaborate questionnaire and analysed the replies given by respondents regarding the present methods and practice for making and receiving international payments, the problems encountered in settling international transactions by means of negotiable instruments and the possible extent of new uniform law. From this analysis it became clear that the only viable approach would be to prepare a new set of rules that would be applicable to a special negotiable instrument for optional use in international transactions.

9. The secretariat of UNCITRAL first prepared a draft Uniform Law on International Bills of Exchange and a Commentary. The draft was later extended to include international promissory notes. The draft was revised over fourteen sessions of the Working Group on International Negotiable Instruments and three sessions of the Commission itself. At the fifth session of the Working Group it was decided to set forth the new provisions in the form of a convention rather than a uniform law.

10. The Convention as adopted aims at facilitating international trade and finance. Throughout the legislative process, attention was constantly given to the comments and observations of Governments, banks, trading and other interested circles.

11. The Convention does not purport to replace existing domestic legislation. It presents for optional use in international transactions a comprehensive body of rules that are theoretically and practically sound, being derived from a coherent set of principles fundamental to all known laws governing bills of exchange and promissory notes.

## II. SALIENT FEATURES OF THE CONVENTION

### A. Scope of application and form of the instrument

12. The Convention applies only to international bills of exchange and international promissory notes when they comply with certain requisites of form. In particular, the Convention applies only to international instruments that bear in both their heading and their text the words "International bill of exchange (UNCITRAL Convention)" or "International promissory note (UNCITRAL Convention)". The use of an instrument governed by the Convention is thus entirely optional. Ratification or accession by a State does not subject all international instruments issued in that State to the legal regime of the Convention but merely opens the door for bankers and merchants to opt for this new legal regime if they deem it preferable in their professional judgment.

13. The Convention provides its own definitions of the terms "bill of exchange" and "promissory note" and explicitly states the conditions on which a bill of exchange or promissory note is considered to be international. According to the Convention, a bill of exchange is a written instrument which: a) contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to its order; b) is payable on demand or at a definite time; c) is dated; and d) is signed by the drawer. A promissory note is a written instrument which: a) contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to its order; b) is payable on demand or at a definite time; c) is dated; d) is signed by the maker.

14. In order to qualify as an international bill under the Convention a bill of exchange must specify at least two of the places listed in article 2(1) of the Convention, and any two so specified places must be situated in different States. The places listed are: the place where the bill is drawn, the place indicated next to the signature of the drawer, the place indicated next to the name of the drawee, the place indicated next to the name of the payee, and the place of payment. In its turn an international promissory note must specify at least two of the places listed in article 2(2) of the Convention, whereby any two so specified places must be situated in different States. The places listed are: the place where the note is made, the place indicated next to the signature of the maker, the place indicated next to the name of the payee, and the place of payment.

15. There is one last requirement that an instrument fulfilling the above criteria must meet in order to qualify as an international instrument under the Convention: a certain place of importance situated in a State that is a party to the Convention must also be specified in the instrument. In the case of a bill of exchange, this will either be the place of drawing or the place of payment. In the case of a promissory note, this will be the place of payment. A State may however declare, in becoming a party to the Convention, that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States. This is the only reservation permitted under the Convention.

16. The legal rules provided by the Convention will apply even where there has been an incorrect or false statement in respect of a place indicated in an instrument. This rule continues the common policy of domestic bills of exchange laws to the effect that instruments are to be judged only by their texts - the material appearing on their faces. It may also be justified on the pragmatic ground that to have provided otherwise could have cast doubts on the applicability of the rules and eventually impaired the free circulation of international bills and notes. The Convention leaves to domestic laws the question of sanctions that may be imposed where such a false or incorrect statement has been made in an instrument.

17. Following the trend established by some domestic legal systems, the Convention does not allow negotiable instruments to be drawn on two or more drawees or to be issued payable to bearer. Neither restriction is significant in practice: nothing prevents a payee or special endorsee from making an instrument covered by the Convention payable to bearer by endorsing it in blank; and multiple-drawee instruments have proved to be quite rare and a source of confusion when they do occur.

18. The United Nations Convention on International Bills of Exchange and International Promissory Notes does not address international cheques. These have been the subject of a parallel project by UNCITRAL, the latest result of which is a draft Convention. The decision to draw up the uniform rules on international bills of exchange and international promissory notes and the uniform rules on international cheques as separate legal texts and not as a consolidated text was taken mainly to accommodate the civil law jurisdictions which have traditionally considered bills of exchange and cheques as separate instruments fulfilling separate functions. Work on the draft Convention on International Cheques was suspended in 1984, partly due to the fact that cheques were seen to play a less important role in international payments.

## B. Interpretation of the Convention

19. An international body of rules aiming at the unification of a certain field of law can fulfil its ultimate purpose only if it is interpreted in a sensible and consistent manner by all legal systems applying it. Like many other international legal texts, the Convention requires courts that interpret it to have regard for its international character and for the need to promote uniformity in its application and the observance of good faith in international transactions.

20. The goal of uniform interpretation is furthered by a scheme called CLOUT (Case law on UNCITRAL texts) under which the secretariat publishes abstracts of court decisions or arbitral awards that apply any of the Conventions or Model Laws that emanate from the work of UNCITRAL.

## C. The concepts of "holder" and "protected holder"

21. In its desire to win commercial acceptance and free circulation of its instruments in international commerce, the Convention firmly upholds the principle of negotiability.

22. When dealing with the rights of the holder of an instrument and the limitations of those rights by the claims and defences of others, the drafters of the Convention were obliged to make a selection between the radically distinct, and yet justifiable, approaches of the civil and common law systems. The solution chosen was a pragmatic two-tier system that distinguishes between a mere holder and a "protected holder". The rights of the protected holder are freed from the claims and defences of other persons to a greater extent than are the rights vested in the ordinary holder.

23. The solution, although similar in technique to the scheme found in common law jurisdictions, is in fact a compromise since it borrows from both the civil and common law approaches. For instance, under the Convention, a person is not prevented from becoming a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument. That regime resembles the civil law much more than the common law on the issue. Perhaps most important, a person who is in possession of an instrument as an endorsee, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, can be awarded the protected holder status even though any endorsement appearing on the instrument was forged or signed by an agent without authority.

24. The Convention enlarges the protection of protected holders by omitting any requirement that a protected holder has given value for the instrument. Furthermore, the test that one must meet in order to attain the protected holder status is easily passed, and every holder is presumed to be a protected holder unless the contrary is proved.

25. Although not so well protected as a protected holder, a mere holder is not totally unprotected from adverse claims and defences. The holder in fact derives an appreciable degree of protection from the rules contained in the Convention that allow certain types of claims or defences only if the holder had knowledge of them or if it was involved in a fraud or theft concerning the instrument.

26. Under the Convention, the transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument that the protected holder had. This so-called "shelter rule" again favours the negotiability of instruments. Its main value is to the protected holder as transferor since it preserves the value it invested in taking the instrument in the first place. It is not possible, however, for a holder who is not entitled to any protection to simply "wash" an instrument by transferring it to a protected holder and then taking it back.

## D. Transfer warranties

27. Article 45 of the Convention brings light to an area that is dealt with in different ways in the existing principal legal systems. Moreover, it brings into the realm of negotiable instruments law a principle that is left to the general law of sales or contracts in civil law jurisdictions.

28. The rule provides that, unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, makes certain implied representations concerning the quality of the instrument and its lack of knowledge of any fact which could impair the right of the transferee to payment of the instrument against the primary obligor upon it. These representations as to quality consist of a warranty that the instrument does not bear any forged or unauthorized signature, and has not been materially altered. Liability of the transferor under the article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

29. The liability provided for here is in part weaker and in part stronger than the one incurred by an endorser. It is weaker in that it does not guarantee payment of the instrument and is available only for the benefit of the immediate transferee; it is stronger in that a transferee may recover, even before maturity, the amount paid by it to the transferor, independently of any presentment, dishonour or protest.

## E. Guarantees and avals

30. The provisions of the Convention dealing with the liability of the guarantor comprise one of the most attractive features of the text. The Convention subtly recognizes both the aval, or the Geneva type of guarantee, and the other, weaker type of guarantee known in common law jurisdictions.

31. Article 46 of the Convention provides that payment of an instrument may be guaranteed either before or after acceptance, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party. A guarantee is expressed by the words "guaranteed", "aval", "good as aval" or words of similar import, accompanied by the signature of the guarantor, or effected by a signature alone on the front of an instrument. In fact, any signature alone on the front of an instrument, other than that of the maker, the drawer or the drawee, is a guarantee. The words by which a guarantee is expressed determine the nature of the obligation undertaken by the guarantor. In the absence of some notation specifying the party for whom a guarantee is given, the rules of the Convention interpret it as a guarantee for the drawee, acceptor or maker.

32. The crucial difference between the two types of guarantees recognized by the Convention ultimately lies in the defences that a guarantor may set up against a holder or a protected holder. They differ, depending upon the words used to express the guarantee (i.e. "guaranteed" produces a different result than "aval") and whether the guarantor is a financial institution. A guarantor that is a bank or other financial institution and which expresses its guarantee by a signature alone is considered to have contracted the stronger type of guarantee or "aval"; a guarantor that is not a bank or other financial institution and which does the same is considered to have contracted the weaker type of guarantee.

## F. Other novel provisions of practical importance

33. The Convention introduces a number of provisions which ought to be of benefit in modern commercial practice. In this, the Convention reflects its recent development, while many of the rules found in the negotiable instruments laws of the world have not kept pace with changing business practices. The following novel provisions are of note:

### 1. Instruments with floating rates of interest

34. The Convention permits instruments to bear interest at a variable rate without loss of negotiability. Where the technique used is in accordance with the requirements of the Convention, the sum payable is deemed to be a definite sum despite the variable rate of interest. For the protection of debtors, the Convention permits rates to vary only in accordance with provisions stipulated in the instrument and in relation to one or more reference rates published or otherwise publicly available. As a further protection, the reference may not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions. There may also be stipulated limits to the permissible variations in the interest rate.

### 2. Rates of exchange outside instrument

35. The Convention also permits reference to a rate of foreign exchange outside an instrument, e.g. a bank exchange rate in a particular place at a certain date, in calculating the amount payable under the instrument. Here as well, the sum payable under an instrument is deemed to be a definite sum even though the instrument states that it is to be paid according to a rate of exchange indicated in the instrument or to be determined as directed by the instrument.

### 3. Instruments payable in instalments

36. The Convention allows instruments that are subject to it to be made payable by instalments at successive dates. They may also contain an "acceleration clause", i.e. a stipulation that upon default in payment of any instalment the entire unpaid balance becomes immediately due.

### 4. Instruments denominated and payable in a monetary unit of account

37. The Convention creates a regime in which instruments may be made payable in units of value other than the official currencies of nation States. This is accomplished by the definition of the terms "money" and "currency", which, in addition to referring to normal mediums of exchange adopted by Governments as their official currency, include a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, e.g. the Special Drawing Right (SDR) of the International Monetary Fund, the European Currency Unit (ECU) and the Unit of

Account of the Preferential Trade Area for Eastern and Southern African States (UAPTA). The Convention also contains a useful new rule selecting a currency of payment where the monetary unit of account in which an instrument is payable is not transferable between the person liable to pay the instrument and the person receiving the payment.

5. Foreign currency obligations

38. The Convention attempts to avoid the controversies that can arise with instruments drawn or made in a currency other than that of the place where payment is to be made. The text provides that, except for the cases where the drawer or maker of an instrument has indicated that it must be paid in a specified currency other than the currency in which the sum payable is expressed, payment must be made in the latter currency. Where applicable, this rule will prevent a debtor from discharging its obligation by payment in another currency, e.g. a local one. It should be of assistance by providing greater certainty in cases involving currency value fluctuations.

39. In an effort to avoid infringing on exchange control regulations and other provisions relating to the protection of the currency of a State, the Convention provides a number of modifying rules to apply in exceptional circumstances.

6. Signature not in handwriting

40. Here as well the Convention attempts to adapt the law to new technology by providing that the word "signature" includes not only a handwritten signature, but also a facsimile or an equivalent authentication effected by any other means.

7. Rules on lost instruments

41. New rules are provided concerning lost instruments. In particular, a party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify it for any loss which it may suffer by reason of the subsequent payment of the lost instrument.

8. Short form of protest

42. The Convention relaxes the highly precise rules which are found in common law jurisdictions on protest. It also provides new common rules for Geneva States that lack regulation concerning the procedures for effecting protest. Under the new regime, unless an instrument stipulates that protest must be made, protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person. The declaration must be to the effect that acceptance or payment is refused. The Convention also extends to four business days the period that is usually allowed to make protest.

9. Uniform period of prescription

43. The Convention provides a single period of prescription or limitation of actions. It is set at four years for almost all actions arising on an instrument under the Convention. The only exception is that, where a party pays an instrument on which another was primarily liable, the party's action for reimbursement (recourse) is barred after one year.

10. Drawing of instruments "without recourse"

44. The Convention contains a rule that should facilitate the practice of forfaiting. Under the new rule, the drawer of a bill may exclude or limit its own liability for acceptance or for payment by an express stipulation on the bill, e.g. by drawing the bill "without recourse". This stipulation will be effective only if another party is or becomes liable on the bill.

## G. Final clauses

45. The final clauses contain the usual provisions designating the Secretary-General of the United Nations as depositary for the Convention. The Convention was open for signature until 30 June 1990 and remains subject to ratification, acceptance or approval by the signatory States. It is open for accession by all States which are not signatory States as from the date it was open for signature. According to article 89(1), the Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

46. The Arabic, Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic. The final clauses also contain provisions dealing with the implementation of the Convention in States having two or more territorial units where different legal systems apply.

Further information about the Convention may be obtained from:

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